IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH

MISC. CIVIL APPLICATION (REVIEW) NO. 726 OF 2006
IN
WRIT PETITION NO. 1509 OF 1991

Shri D.H. Ulemale
Lecturer, Shri Shivaji College of
Agriculture, Amravati. ... APPLICANT

Versus

1. Arun Kumar s/o Keshaorao Vithonde
   aged about 53 years, r/o Radha Nagar,
   Morshi Road, Amravati.

2. Punjabrao Krishi Vidyapeeth, Akola,
   through its Vice Chancellor, Akola.

3. Shri Shivaji Education Society,
   Amravati, through its Chairman,
   Amravati.

4. Shree Shivaji College of Agriculture,
   Amravati, through its Principal. ... RESPONDENTS

Shri Anjan De, Advocate for the applicant.
Shri M.M. Sudame, Advocate for non-applicant/ respondent No.1.
Shri J.B. Jaiswal, Advocate for non-applicant/ respondent No.2.
Shri R.S. Parsodkar, Advocate for non-applicant/ respondents No. 3 & 4.

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CORAM : A.P. LAVANDE AND

B.P. DHARMADHIKARI, JJ.
DATE OF RESERVING THE ORDER : MARCH 28, 2007.
DATE OF PRONOUNCING THE ORDER : APRIL 05, 2007.

ORDER :

Application for Review is preferred by original Respondent No. 4 against the judgment and order dated 28/6/2006 passed by Division Bench consisting of Shri P.V. Kakade & B.P. Dharmadhikari JJ. allowing said writ petition filed by present Non-applicant No. 1 and setting aside selection/appointment of Applicant as Lecturer in Agricultural Economics and directing Employer/management to appoint Petitioner in his place and to pay him consequential amount of difference in emoluments. Selection and appointment of present Applicant has been set aside mainly on the ground that he did not possess required qualifications as prescribed by Statute 73 contained in Chapter VII of Maharashtra Agricultural Universities Statutes, 1990. In Writ Petition Adv. Mohan Sudame had represented Petitioner, Adv. J.B. Jaiswal represented Agricultural University (P.K.V.), Adv. Ms. Rane represented Employer College and Management & Adv. Damle represented Respondent No 4

i.e. present Review Applicant. In Review proceedings Adv. De has appeared for Review Applicant and Adv. R.S. Parsodkar has appeared for From applicant No 3 and 4 i.e. Management and College. Adv. Mohan Sudame has continued to represent original Petitioner i.e. Non-applicant No 1, and Adv. J.B. Jaiswal continued to represent Agricultural University (P.K.V.) i.e. present Non- applicant No 2. Accordingly we have heard respective Counsel about maintainability of Review and also on its merits.

2. Review Applicant has raised following contentions to justify his demand for review :--

(a) Condition of having published material to the credit of candidate prescribed by Statute 73 is quashed and set aside by the judgment dated 9/12/1991 in Writ Petition No. 3601 of 1991 by Aurangabad Bench of this High Court.

(b) Finding reached in Writ Petition No. 1509 of 1991 that review applicant had two papers accepted for publication is enough to sustain and support his selection.

(c) Fact that present non-applicant No. 1 i.e. original Petitioner was at the time of selection drawing salary from other employment which he suppressed and played fraud upon Management/Employer pleaded by Employer/Management in their return in original writ petition is not considered.

(d) Non-applicant No. 1 has been described as handicapped in the chart prepared for the purposes of interview by management. Review Applicant contends that later on he got documents showing that certificates produced by him for said purpose are fabricated and bogus documents. Now Employer has initiated disciplinary inquiry against non-applicant No. 1 in the matter.

(e) Non-applicant No. 1 also manipulated documents of his date of birth and has accepted this fact in correspondence with Management/Employer.

(f) Whether publication is a "recognised journal" or not is squarely within the domain of Employer/Management and court of law cannot interfere in the matter to hold that journal is not recognised one.

Adv. De has accordingly advanced arguments to substantiate

points raised above and at the end pointed out that Review Applicant is being displaced from service after almost 19 years of his selection and employment. He states that though interviews were held on 18/12/1990, the effect of subsequent judgment dated 9/12/1991 of Aurangabad Bench has not been correctly appreciated inasmuch as condition found to be invalid must be treated to be non-existent since its inception and this effect of declaration of said subsequent judgment is lost sight of. He further states that in return filed by employer/management in original writ petition, they accepted that Review Applicant had 1 published paper and 1 paper accepted for publication to his credit at the time of interview. He argues that in such circumstances statement made on affidavit by Employer ought to have been acted upon and this Court could not have given importance to an affidavit to the contrary filed by Shri B.D. Bhole. He states that there was no need to file any rejoinder or surrejoinder to said affidavit of Shri Bhole in view of affidavit reply filed by Employer. In relation to alleged suppression of alternate or second source of employment by present non-applicant No. 1, it is argued that the issue has not been considered at all and in view of said material,

Employer or Management could not have selected him and hence writ petition at his instance ought to have been dismissed. He has also invited attention to documents filed along with Review Application to point out how authorities have pointed out that documents submitted to Employer by non-applicant No. 1 are forged and bogus. He also invited attention to reply submitted by non-applicant No. 1 accepting said documents and the error in recorded date of birth. He has also contended that papers of non applicant No. 1 were also published in very same journal which this Court has refused to recognize and he has further pointed out that research articles of several students guided by non applicant No. 1 are also published subsequently in that journal. While replying to arguments of learned counsel for non-applicant No. 1 he reiterated his contentions and stated that non-applicant No. 1 cannot question stipulations in relation to qualification mentioned in public advertisement by Employer. He states that all these aspects are lost sight of while delivering the judgment on 28/6/2006 and hence, the judgment needs to be reviewed.

3. Advocate Parsodkar for Management/College has only stated that liability for payment of back wages of present non-applicant No. 1 ought not to have been fastened upon non-applicants No. 2 and 3 as they have already paid salary for said period for the work done by Review Applicant. He has clarified that these non-applicants have no objection to accept the judgment as delivered by this Court or even as may be delivered in present Review proceedings. He urged that though College or Management has not filed any review, this Court should consider its position and predicament and should pass appropriate orders in this respect.

4. Advocate Sudame for present non-applicant No. 1 has invited attention to the judgment dated 28/6/2006 as delivered to state that all issues which were raised before this Court for its consideration have been appropriately dealt with and original Respondent No. 4 (present Review Applicant) who lost in writ petition is making an effort to have reconsideration of entire controversy which is not within the scope of Review proceedings. He points out that qualifications prescribed by

Statute 73 are considered by Selection Committee and thereafter only Review Applicant was selected ignoring the fact that he did not have two published articles to his credit on the last date of submitting application i.e. 27/09/1990. He states that said Respondent/Review Applicant did not have any published article to his credit by 27/09/1990. He further states that finding of non publication delivered by this Court is reached on the basis of document furnished by management itself and stand in return of Employer/Management has rightly not been accepted. He further states that Statute 73 contemplates actual publication of papers and not mere acceptance for publication and paper of Original Petitioner (present non-applicant No. 1) has been published in other Journal which is recognised at National/ International levels. He points out that non-applicant No. 1 was placed at serial No. 1 in waiting list by Select Committee and when selection of present Review Applicant was found to be vitiated, said non- applicant No. 1 is bound to replace him and is also rightly given all consequential benefits. In order to point out scope of consideration & nature of review, he has relied upon certain judgments.

5. Before proceeding to consider the arguments on merit, it will be appropriate to find out the scope and nature of review jurisdiction. Powers of Administrative Tribunal to review are considered by Hon'ble Apex Court in AIR 2000 S.C. 85 "Ajit Kumar Rath v. State of Orissa" and we find that these observations relied upon by Adv. Sudame are apt even in present circumstances: --

> "30. The provisions extracted above indicate that the power of review available to the Tribunal is the same as has been given to a court under S. 114 read with O. 47 of C.P.C. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument

being needed for establishing it. It may be pointed out that the expression "any other sufficient reason" used in Order 47, Rule 1 means a reason sufficiently analogous to those specified in the rule.

31. Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment."

Similarly, in other judgment relied upon by present non applicant No. 1 reported at 2005 (12) SCC 347 in the case of State of Kerala & Others vs P. T. Thomas, Hon'ble Apex Court has held that issue which was not raised in main writ petition cannot be gone into while considering review petition.

Other judgments of Hon'ble Apex Court on the point can briefly be considered now. In case of Jain Studios Ltd. vs. Shin Satellite Public Co. Ltd. reported at 2006 (5) SCC 501, in paragraph 11, it has been observed that once the prayer is refused, review petition to have re-hearing of original matter is not maintainable and power of review cannot be confused with appellate power. Repetition of old and overruled argument has been held to be not sufficient to reopen

concluded adjudication. In Kerala State Electricity Board vs. Hi-tech Electrothermics and Hydropower Ltd. reported at 2005 (6) SCC 651, it has been held that it is not open to Court to re-appreciate its earlier application of mind and to reach a different conclusion even if that is possible. Hon'ble Apex Court has held that such reappreciation is not to be undertaken unless and until it is shown that there is an error apparent on the face of record or for some reason akin there to. In judgment reported at 2004 (5) SCC 222 between Common Cause vs. Union Of India and Others, Hon'ble Apex Court has clarified that an application in substance for review of judgment disguised as application for clarification to avoid procedure governing the review petition must not be entertained. It is further clarified that a point not argued is deemed to have been given up and cannot be permitted to be raised by filing such review petition. Facts of case at hand are similar and Review Applicant / Respondent No.4 cannot seek to supplement his earlier arguments or try to raise new grounds by filing such review. There cannot be any second hearing in present circumstances.

6. Perusal of judgment delivered by us becomes essential to consider the arguments advanced by learned Advocate Shri De. In para 15 of our judgment dated 28/6/2006, we have already rejected prayer and attempt of Review Applicant to bring on record material to show that subsequent research articles of present non-applicant No. 1 were also published in very same journal i.e. "Maharashtra Journal of Agriculture and Economics". Story of publication of research articles of Review Applicant in said journal in its October 1989 volume is considered by us in paragraph 16 of said judgment and held to be incorrect. It has been also recorded that affidavit of non- applicant No. 2 - PKV about treating said journal as recognised one is of no consequence. It is to be noticed that said affidavit was filed by non-applicant No. 2 University in response to direction dated 14/1/2005 passed by earlier Division Bench asking it to explain meaning of "evidence of published papers in recognised journals". In said affidavit, University has stated that said words meant "the article published in the recognised journals at National & International level." It has further added that the journal is considered as a valuable publication i.e. equivalent to publication of national level

by it. It is thus clear that University then could not make a definite statement that said journal had recognition at National or International level. It could not point out any other reputed institution or body treating or recognising said journal as such. Even in present Review, Applicant has not pointed out any such institution at National or International level. In any case we had considered the controversy one way or the other and review cannot be a solution to get over it. His contention that non-applicant No. 1 got selected because of publication of his research papers in very same journal is not borne out from record and in review non-applicant has produced his paper published in other Journal by name "Indian Journal Of Agricultural Economics" in September,1990. Further in paragraph 4 of said judgment, we have considered provisions of Statute 73, Appendix III which necessitates the Applicant to possess evidence of published papers. Statute does not prescribe evidence of acceptance of papers for publication as sufficient. In paragraph 15 we have accepted that requisite qualification was evidence of published papers. Though Employer or Management stated in their reply that present Applicant had two research papers at his credit, one published and one accepted for

publication, this Court has noticed that for the purposes of interviews conducted on 18/12/1990, Management prepared a chart and in it, present Applicant was not shown to have any research paper already published to his credit. This chart along with affidavit of Shri B.D. Bhole, Honorary Secretary of the body which published said journal has been relied upon in paragraphs 19 & 20 of judgment under review to hold against Applicant and to discard reply filed by Employer. Again, there is no error apparent warranting reconsideration of the issue.

7. Decision of Aurangabad Bench is considered in paragraph 17 of judgment and it has been noticed that situation prevailing on 27/9/1990 i.e. the last date prescribed for filing of application by advertisement dated 8/9/1990 was only relevant and candidates had been judged in the background of qualifications then prevailing and therefore the subsequent judgment was of no relevance. It is apparent that as original respondent No. 4 did not qualify, original Petitioner placed at serial No. 1 in waiting list became eligible and would have been in service when Aurangabad Bench delivered its judgment. The

aspect is gone into by us and there cannot be any fresh consideration on the basis of very same material.

8. Employer as also University had addressed this Court in main Writ Petition and their arguments are reproduced and considered in the judgment dated 28/06/2006. It is not their case in Review that any particular point raised by them in oral arguments has escaped attention of this Court. The arguments on these lines are not advanced even by Review Applicant. During hearing of review a specific query in this respect was made by us to Adv. De and he stated that as he did not represent Review Applicant i.e. Respondent no. 4 in writ petition, he could not answer it. The review is not meant to put forth the arguments not advanced though available. Objection to entry of present non-applicant No. 1 in service was raised by Review Applicant but those arguments have not been substantiated and this Court in paragraph 14 of Judgment has noticed argument of original Petitioner that his Employer never objected to his entry in employment. It was not the stand that he was not handicapped or applied for selection against post

reserved for handicapped. Contention about forged certificate etc. is raised for the first time in review. Non-applicant No. 1 has by filing affidavit in review asserted that his certificate of being handicapped is genuine. During arguments, Adv. De has stated that Employer has already initiated departmental inquiry against present non-applicant No. 1. Challenge in main writ petition was to the selection of present Review Applicant because of lack of qualification in him and for examining said aspect, legality or otherwise of procuring employment by original petitioner was not and is not relevant. Non-applicant No. 1 was only a part-timer earlier and details of process through which he became permanent and entered the service are not on record. Locus of original Petitioner to maintain writ petition was not even questioned then. The post was not reserved for handicapped category and present non-applicant No. 1 had been selected from open category and was on waiting list. The issue about his disputed date of birth is being considered by Employer and again same cannot be the ground for review. Attention was also invited to paragraphs 5 and 6 of reply affidavit of respondents No. 1 and 2 but that was only to contend that

other post was reserved for backward class candidate as mentioned in paragraph 13 of judgment. This aspect is considered in paragraph 24 of judgment. Hence no case for review is being made out even on this ground.

9. Arguments of Management/Employer about fastening liability of wage difference upon them is misconceived before us and they should have made such grievance before appropriate forum.

10. We, therefore, find that no case for review is made out in present matter and Review Applicant is only trying to have second hearing. M.C.A. is accordingly dismissed, however without any order as to costs.

JUDGE **JUDGE**

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